



**UNITED STATES DEPARTMENT OF COMMERCE**  
**The Assistant Secretary for Communications**  
**and Information**  
Washington, D.C. 20230

NOV 24 2004

Mr. Jim Tozzi  
Center for Regulatory Effectiveness  
Suite 700  
11 Dupont Circle, N.W.  
Washington, DC 20036-1231

RE: Appeal of NTIA Decision on CRE Request for Correction of Information  
Under the Data Quality Act

Dear Mr. Tozzi:

I received your appeal of the initial determination by the National Telecommunications and Information Administration (NTIA) that the financial statements of the Internet Corporation for Assigned Names and Numbers (ICANN) to which you seek changes are not subject to NTIA's guidelines implementing the Data Quality Act.<sup>1</sup> Having reviewed your initial request and your appeal, I agree with the decision expressed in the letter you received from Charles Franz, NTIA's Acting Chief Information Officer, dated August 30, 2004 (CIO Letter). Thus, I deny your request for relief.

As Assistant Secretary for Communications and Information and NTIA Administrator, it would not be appropriate for me to opine on the applicability of the Data Quality Act on any entity other than the agency that I manage. I disagree with your characterization that the CIO Letter stated that the ICANN financial statements in question are "not subject to the Data Quality Act." In fact, the CIO Letter made it clear that NTIA does not believe this information is subject to the *NTIA guidelines* implementing the Data Quality Act because ICANN's financial statements are not information disseminated by NTIA as defined by those guidelines.<sup>2</sup>

NTIA did not distribute or release to the public the financial statements in question. Moreover, NTIA does not have the authority to direct ICANN to distribute or release the corporation's financial statements to the public or the authority to review and approve this information before its release. NTIA's relationship with ICANN is based on its legal agreements with the organization. The Memorandum of Understanding (MOU) between NTIA and ICANN does not provide NTIA with the right to direct the release of

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<sup>1</sup> The Data Quality Act appears as Section 515 of the Treasury and Government Appropriations Act for Fiscal Year 2001, Pub. L. No. 106-554, 114 Stat. 2763, 2763A-153 (2000).

<sup>2</sup> "Dissemination means agency initiated or sponsored distribution of information to the public." NTIA Information Quality Guidelines at § 1.2 (available at [http://www.ntia.doc.gov/ntiahome/occ/ntiaguidelines\\_09252002.htm](http://www.ntia.doc.gov/ntiahome/occ/ntiaguidelines_09252002.htm)).

or to review or approve ICANN's financial statements before release. The contract between NTIA and ICANN is limited to the provision of technical functions related to the Internet Assigned Numbers Authority (IANA). Contrary to your assertions, the contract provision to which you refer in your appeal only permits NTIA to review certain cost data related to the imposition of fees for services to third parties under the contract. This data would include only such data as would be necessary for NTIA and the Department to ensure that the requested fee levels are fair and equitable and do not in the aggregate exceed the costs of providing services under the contract. Moreover, the Department and NTIA are not entitled to this information unless ICANN seeks to recover its costs for the provision of these services through the imposition of fees.<sup>3</sup> The financial statements in question would not fall into this category.

Even though NTIA's guidelines implementing the Data Quality Act do not apply in this instance, the Department of Commerce and NTIA have a strong commitment to ensuring the transparency and accountability of ICANN processes. As Secretary Evans said shortly before enactment of the Sarbanes-Oxley Act, "Trust matters. Character matters. Values matter."<sup>4</sup> These values are the cornerstone of the Department's MOU with ICANN. If an appropriate regulatory or judicial authority were to find that ICANN had failed to meet its legal obligations with respect to applicable accounting standards, the Department would certainly consider that information in evaluating its ongoing relationship with the organization.

As the agency recommended to you earlier, I suggest that your concerns should be directed to the appropriate officials at the organization. I have every confidence that ICANN will take appropriate steps to address this issue.

Sincerely,

A handwritten signature in dark ink, appearing to read "Michael D. Gallagher". The signature is fluid and cursive, with the first name "Michael" and last name "Gallagher" being clearly legible.

Michael D. Gallagher

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<sup>3</sup> See IANA Functions Contract, DG1335-03-SE-0336, section C.2.1. To date, ICANN has not requested approval for any such fees under this contract. Even if ICANN did request approval to impose a fee for these contract services, such cost data would be treated by the NTIA and the Department of Commerce as business confidential and proprietary and would not be released to the public consistent with federal acquisition regulation.

<sup>4</sup> "A Matter of Trust," Remarks by Secretary of Commerce Donald L. Evans, City Club of Cleveland, Cleveland, Ohio (July 12, 2002) (available at [http://www.doc.gov/opa/speeches/Evans/2002/July\\_12\\_Cleveland.htm](http://www.doc.gov/opa/speeches/Evans/2002/July_12_Cleveland.htm)).